

76-1055

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1055

Supreme Court, U. S.  
**FILED**

FEB 28 1977

MICHAEL RODAK, JR., CLERK

STANLEY V. TUCKER,

*Petitioner*

*v.*

PEOPLE'S SAVINGS BANK-BRIDGEPORT,

*Respondent*

**BRIEF IN OPPOSITION TO PETITION FOR WRIT  
OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CONNECTICUT**

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## TABLE OF CONTENTS

	PAGE
I. CITATION .....	1
II. QUESTIONS PRESENTED .....	2
III. STATEMENT OF THE CASE .....	2
IV. ARGUMENT .....	3
a. Question 1 .....	3
b. Question 2 .....	5
c. Question 3 .....	5
d. Question 4 .....	7
V. CONCLUSION .....	7

## APPENDIX

## TABLE OF CITATIONS

<i>Statutes:</i>	PAGE
28 U.S.C. §1257(3) .....	3
CONN. GEN. STAT. 52-278a (Rev. 1958) .....	4
CONN. GEN. STAT. 52-278l (Rev. 1958) .....	4
CONN. GEN. STAT. 52-504 (Rev. 1958) .....	2
<i>Cases:</i>	
<i>Boddie v. Connecticut</i> , 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) .....	7
<i>Cake v. Mohun</i> , 164 U.S. 311, 17 S.Ct. 100, 41 L.Ed. 447 (1896) .....	6
<i>Fuentes v. Shevin</i> , 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed. 2d 556 (1972) .....	6
<i>Gospel Army v. City of Los Angeles</i> , 331 U.S. 543, 67 S.Ct. 1428, 91 L.Ed. 1662 (1947) .....	4
<i>Market St. Ry. Co. v. Railroad Commission</i> , 324 U.S. 548, 65 S.Ct. 761, 89 L.Ed. 1171, <i>reh. den.</i> 324 U.S. 890, 65 S.Ct. 1020, 89 L.Ed. 1438 (1945) .....	4
<i>Mitchell v. W. T. Grant Company</i> , 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974) .....	6
<i>People's Savings Bank-Bridgeport v. Tucker</i> , Volume XXXVIII, No. 20, Conn. L.J. p. 6, (November 16, 1976) 365 A.2d 632 (1976) .....	1
<i>Powell v. Alabama</i> , 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932) .....	6
<i>Silver v. Kingston Realty Corp.</i> , 114 Conn. 349, 158 Atl. 889 (1932) .....	3
<i>Sniadach v. Family Finance Corp.</i> , 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 359 (1969) .....	6
<i>Young v. Polish Loan &amp; Industrial Corporation</i> , 126 Conn. 714, 11 A.2d 395 (1940) .....	3

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STANLEY V. TUCKER,  
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v.

PEOPLE'S SAVINGS BANK-BRIDGEPORT,  
*Respondent*

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### BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

The respondent People's Savings Bank-Bridgeport respectfully prays that this Court deny the petition for a writ of certiorari to the Supreme Court of the State of Connecticut as sought by the petitioner Stanley V. Tucker.

#### I. CITATION

A decision of the Connecticut Supreme Court, *People's Savings Bank-Bridgeport v. Tucker*, Volume XXXVIII, No. 20, Conn. L.J., p. 6 (November 16, 1976) (said decision being set forth on page A-1 of Petition). Said decision is reported as *People's Savings Bank-Bridgeport v. Stanley V. Tucker*, 365 A.2d 632 (1976).

## II. QUESTIONS PRESENTED

1. Did the action of the Supreme Court of the State of Connecticut constitute a final judgment from which a writ of certiorari may issue?
2. Does the petition conform to paragraph 4 of Rule 23 of the Supreme Court of the United States?
3. Did the appointment of a receiver of rents in a mortgage foreclosure action, by the trial court, constitute a denial of due process of law to the petitioner?
4. Did the appointment of a receiver of rents in a mortgage foreclosure action, by the trial court, constitute a denial of equal protection of the law to the petitioner?

## III. STATEMENT OF THE CASE

This is an action to foreclose a real estate mortgage, said action being returnable to the Superior Court for Hartford County and the State of Connecticut. The petitioner, Stanley V. Tucker, owner of the property which is the subject of this foreclosure action, filed a *pro se* appearance. The respondent-mortgagee moved that the said Superior Court appoint a receiver of rents (Petition A-2) in accordance with Conn. Gen. Stat. §52-504 (Rev. 1958) (Petition A-5) in order to protect and preserve the property interests of all parties.

On April 2, 1976, counsel for the respondent and the *pro se* petitioner appeared in Superior Court for Hartford County and fully argued the merits of the then pending motion (Petition A-3). On April 5, 1976, the court issued its decision granting plaintiff's motion and appointed John S. Pinney, Esquire, to the position of receiver of rents. Attorney Pinney, in no manner connected with the respondent, its attorneys, or the *pro se* petitioner, was selected by said court as an independent and impartial receiver of rents under bond and fully accountable to said Superior Court.

On October 6, 1976, over six months after the appointment of said receiver of rents, the petitioner filed an appeal to the Supreme Court of the State of Connecticut, contesting the appointment of the receiver of rents and four other court orders relating to preliminary proceedings. A motion to dismiss said appeal was filed with the Supreme Court of the State of Connecticut on October 15, 1976 (A-1), and said motion was argued on November 3, 1976. On said November 3, 1976, the Supreme Court of the State of Connecticut dismissed the appeal of the petitioner, Stanley V. Tucker (Petition A-1).

## IV. ARGUMENT

### 1. THE ACTION OF THE SUPREME COURT OF THE STATE OF CONNECTICUT DID NOT CONSTITUTE A FINAL JUDGMENT FROM WHICH A WRIT OF CERTIORARI MAY ISSUE.

The statute upon which jurisdiction is alleged, 28 U.S.C. §1257(3) requires that the petitioner seek review of a final judgment or decree of the Supreme Court of the State of Connecticut. Clearly, the appointment of a receiver of rents in a mortgage foreclosure action is not a final judgment or decree as required by said statute.

The Supreme Court of the State of Connecticut has decided this issue on at least two prior occasions. See: *Silver v. Kingston Realty Corp.*, 114 Conn. 349, 158 Atl. 889 (1932) and *Young v. Polish Loan & Industrial Corporation*, 126 Conn. 714, 11 A.2d 395 (1940).

In the *Silver* case, Justice Maltbie, in his concurring opinion reported only at 158 Atl. 890, states that the rights to the funds collected by a receiver of rents are not determined until final judgment. Both parties are protected by court supervision of the receiver until the ultimate outcome of the case.



The appointment of a receiver of rents in a foreclosure action is clearly not a final judgment under the standard set forth by this Court in *Market St. Ry. Co. v. Railroad Commission*, 324 U.S. 548, 65 S.Ct. 761, 89 L.Ed. 1171, *reh. den.* 324 U.S. 890, 65 S.Ct. 1020, 89 L.Ed. 1438 (1945). In that case, this Court, in stating that a judgment must be final, set down the following standard:

Final it must be in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not merely interlocutory or intermediate steps therein. It must be the final word of a final court. *Id.* 324 U.S. 551.

This Court has stated, on another occasion, that the determinative issue is whether or not the rights of the parties have been fully adjudicated. *Gospel Army v. City of Los Angeles*, 331 U.S. 543, 67 S.Ct. 1428, 91 L.Ed. 1662 (1947).

A reading of Conn. Gen. Stat. §52-504 (Rev. 1958) (Petition A-5) indicates that the court may modify or rescind said appointment. It is the contention of the respondent that the *Young* and *Silver* cases correctly state the conclusion that said orders are always subject to modification and/or rescission by the trial court. The respondent respectfully contends that the appointment of a receiver of rents in a mortgage foreclosure action is a preliminary action not subject to review and taken by a trial court for the purpose of preserving and protecting the interests of the parties before said court.

Petitioner alleges that the present order was a final order within the provisions of Conn. Gen. Stat. §52-2781 (Rev. 1958) (A-3). This statute clearly does not apply. First, respondent contends that the appointment of a receiver of rents is clearly not a prejudgment remedy as defined under Connecticut law. (See Conn. Gen. Stat. §52-278a) (A-3). In addition, the statute upon which the petitioner relies was not effective until June 2, 1976. The matter from

which the petitioner appeals was decided by the trial court on April 5, 1976. (Petition A-3).

## **2. THE PETITION DOES NOT CONFORM TO PARAGRAPH 4 OF RULE 23 OF THE SUPREME COURT OF THE UNITED STATES.**

Paragraph 4 of Rule 23 of the Supreme Court of the United States states, "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

Respondent contends that the petition before this court fails to comply with these requirements. The petition fails to set forth in a concise and clear manner the allegations of fact and law upon which the petitioner apparently relies.

## **3. THE APPOINTMENT OF A RECEIVER OF RENTS IN A MORTGAGE FORECLOSURE ACTION, BY THE TRIAL COURT, DOES NOT CONSTITUTE A DENIAL OF DUE PROCESS OF LAW TO THE PETITIONER.**

Petitioner contends that the appointment of a receiver of rents, under the appropriate Connecticut procedures, acts as a denial of his property without due process of law. A review of the facts reveals, however, that prior to the trial court entering its order, the petitioner, Stanley V. Tucker, had notice of said proceeding and he was fully heard on said matter in open court. (Petition A-3). Respondent respectfully contends that this procedure, under Conn. Gen. Stat. §52-504 (Rev. 1958), exceeds the minimum requirements of due process of law.

Conn. Gen. Stat. §52-504 (Rev. 1958) establishes a proceeding to protect the interests of all parties. The statute requires that, prior to taking action upon an application

for the appointment of a receiver, the court must issue due notice to the party affected by such order. In addition, the statute states that the court may modify and/or rescind such an order. In the instant case, it is clear that the petitioner had proper notice, did appear and further, vigorously oppose the motion for the appointment of a receiver of rents. (Petitioner A-3).

This Court has long recognized the appointment of receivers in foreclosure actions, wherein the trial court deemed it necessary to appoint a receiver on a temporary basis when the interests of the parties required it. *Cake v. Mohun*, 164 U.S. 311, 17 S.Ct. 100, 41 L.Ed. 447 (1896).

Respondent contends that the facts of the instant case, to the extent that they involve a prior legal interest in property on the part of the lender, are somewhat analogous to *Mitchell v. W. T. Grant Company*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974). In fact, in the present case, all the requirements of notice and hearing as set forth in *Mitchell, Id.*, were complied with, and the more stringent procedural requirements of *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969) and *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) were complied with. As the court noted in the *Fuentes* case, *Id.*, procedural due process is not an impenetrable barrier to the taking of property but, rather, serves to establish a fair process for the determination of the rights of the parties. Respondent contends that the procedures employed in the instant case are not in violation of our constitutionally safeguarded rights. The basic elements of due process are notice and right to a hearing before a competent tribunal. *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). A review of the fact situation in this case clearly indicates that these elements have been met.

#### **4. THE APPOINTMENT OF A RECEIVER OF RENTS IN A MORTGAGE FORECLOSURE ACTION, BY THE TRIAL COURT, DID NOT CONSTITUTE A DENIAL OF EQUAL PROTECTION OF THE LAW TO THE PETITIONER.**

The respondent respectfully contends that the petitioner has failed to brief the argument that the appointment of a receiver of rents in this mortgage foreclosure action denies him equal protection under the law. Therefore, it is the respondent's contention that this argument has been discarded.

An equal protection argument, in this matter, must allege and prove that the statute in question, Conn. Gen. Stat. §52-504 (Rev. 1958), affects the petitioner as regards his race, alienage, religion, poverty or class. *Boddie v. Connecticut*, 401 U.S. 371, 385, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). Clearly, the statute in question does not discriminate against the petitioner in this manner.

#### **V. CONCLUSION**

For the reasons set forth in this brief, the respondent respectfully requests this Honorable Court to deny the petition for a writ of certiorari to the Supreme Court of the State of Connecticut.

**Respondent, People's Savings  
Bank-Bridgeport**

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# APPENDIX

1a

NO. 201542

PEOPLE'S SAVINGS BANK-  
BRIDGEPORT : HARTFORD COUNTY  
VS : SUPREME COURT  
STANLEY V. TUCKER, : OCTOBER 14, 1976  
ET ALS

## *MOTION TO DISMISS APPEAL*

The Plaintiff-Appellee in the above-entitled action, PEOPLE'S SAVINGS BANK-BRIDGEPORT, respectfully moves the Honorable Supreme Court of the State of Connecticut to dismiss the appeal of the Defendant, Stanley V. Tucker, on the following grounds:

1. This is an Appeal from the overruling of the Plea in Abatement and, the overruling of a Plea in Abatement is not a final judgment which can be the basis of an appeal to this Court and, therefore, said Court lacks jurisdiction.

2. This is an Appeal from the denial of a Motion to Erase and the denial of a Motion to Erase is not a final judgment which can be the basis of an Appeal to this Court, and, therefore, said Court lacks jurisdiction.

3. This is an Appeal from the appointment of a receiver of rents and the denial of a Motion to Remove said receiver. Both of these actions taken by the lower court do not constitute final judgments which can be the basis of an Appeal to this Court and, therefore, said Court lacks jurisdiction.

4. This is an Appeal from the denial of a Motion for Contempt and said denial is not a final judgment which can be the basis of an Appeal to this Court and, therefore, said Court lacks jurisdiction.



2a

5. This is an Appeal from the denial of a Motion for Contempt. Defendant-Appellant is not aggrieved therefrom and, therefore, this Court lacks jurisdiction.

6. This Appeal is taken solely for the purposes of delay.

PLAINTIFF, PEOPLE'S SAVINGS  
BANK - BRIDGEPORT

By .....  
NEIL E. ATLAS  
ATLAS & HUDON, *Its Attorneys*

This is to certify that I have filed this Motion, with sufficient copies, with the Clerk of the Supreme Court for Hartford County, pursuant to Section 639 of the Practice Book.

NEIL E. ATLAS  
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P. O. Box 7-70, 14 Brace Road  
West Hartford, Conn. 06107  
Juris No. 01115

3a

[§52-278l. (P.A. 76-401, § 4) Appeal; order deemed a final judgment; time; stay; effect of motion to discharge by defendant on his property]

(a) An order (1) granting or denying a prejudgment remedy following a hearing under section 52-278d, or (2) granting or denying a motion to dissolve or modify a prejudgment remedy under section 52-278e, or (3) granting or denying a motion to preserve an existing prejudgment remedy under section 52-278g shall be deemed a final judgment for purposes of appeal.

(b) No such appeal shall be taken except within seven days of the rendering of the order from which the appeal is to be taken.

(c) No such order shall be stayed by the taking of an appeal except upon the order of the judge who made such order, and any such stay shall be granted only if the party taking the appeal posts a bond, with surety, in a sum determined by such judge to be sufficient to indemnify the adverse party for any damages which may accrue as a result of such stay.

(d) If a motion to discharge such prejudgment remedy is brought by the defendant, the property affected by such remedy may be restored to the use of the defendant, if the defendant posts a bond with surety in an amount determined by such judge to be sufficient to indemnify the plaintiff for any damages which may accrue by the defendant's continued use of such property, until such time as such motion is decided.

(1976, P.A. 76-40, §4, eff. June 2, 1976.)



**§52-278a. Definitions**

The following terms, as used in sections 52-278a to 52-278g, inclusive, shall have the following meanings, unless a different meaning is clearly indicated from the context:

(a) "Commercial transaction" means a transaction which is not a consumer transaction.

(b) A "consumer transaction" means a transaction in which a natural person obligates himself to pay for goods sold or leased, services rendered or monies loaned for personal, family or household purposes.

(c) "Person" means and includes individuals, partnerships, associations and corporations.

(d) "Prejudgment remedy" means any remedy or combination of remedies that enables a person by way of attachment, foreign attachment, garnishment or replevin to deprive the defendant in a civil action of, or affect the use, possession or enjoyment by such defendant of, his property prior to final judgment but shall not include a temporary restraining order.

(e) "Property" means any present or future interest in real or personal property, goods, chattels or choses in action, whether such is vested or contingent.

(1973, P.A. 73-431, §1, eff. May 30, 1973; 1973, P.A. 73-616, §65, eff. June 1, 1973.)